

## Estate Planning with Conservation Restrictions in Massachusetts

### Estate Planning:

**Estate planning** is a process involving the counsel of professional advisors who are familiar with your goals and concerns, your assets and how they are owned, and your family structure. It can involve the services of a variety of professionals, including your lawyer, accountant, financial planner, life insurance advisor, banker and broker.

Estate planning covers the transfer of property at death as well as a variety of other personal matters and may or may not involve **tax planning**. The core document most often associated with this process is your **will**.

A **will** provides for the distribution of property owned by you at the time of your death in any manner you choose. Wills can be of various degrees of complexity and can be utilized to achieve a wide range of family and tax objectives. If a will provides for the outright distribution of assets, it is sometimes characterized as a **simple will**. If the will establishes one or more trusts, it is often called a **testamentary trust will**. Alternatively, the will may leave probate assets to a preexisting inter vivos trust (created in your lifetime), in which case it is called a **pour over will**.

The term **trust** describes the holding of property by a **trustee** (which may be one or more persons or a corporate trust company or bank) in accordance with the provisions of a written trust instrument for the benefit of one or more persons called **beneficiaries**. A person may be both a trustee and a beneficiary of the same trust. A trust created by your will is called a testamentary trust and the trust provisions are contained in your will.

In either case, the purpose of the **trust** arrangement (as opposed to outright distribution) is to ensure continued property management and creditor protection for the surviving family members, to provide for charities, and to minimize taxes.

### Tax Planning:

One of the most important reasons for estate planning is to reduce taxes. One goal is to reduce or eliminate **estate taxes**. In 2009, an estate valued at over \$3.5 million is subject to a federal estate tax. Estates valued at less than \$3.5 million are not subject to federal tax. This is the highest **estate tax exemption** under the current federal law.\* However, estates valued at more than \$1 million are subject to the Massachusetts estate tax.

\* This law (Economic Growth and Tax Relief Reconciliation Act or EGTRA) provides for no federal estate tax in 2010. EGTRA expires or “sunset” in 2011, and if no action is taken to renew it, the federal estate tax exemption will revert to \$1 million in 2011, under the provisions of prior federal law.

One way to reduce taxes is by changing the ownership of property. Sometimes, it is better to **give** property to family members before you die. This reduces the value of your estate. If you create a **trust** and convey your property to the trust, this also can reduce the value of your estate, while providing for family members. Although a married couple can defer taxes by utilizing the **marital deduction** (which allows the surviving spouse to pay no tax and defers taxation of the estate until the surviving spouse dies), the marital deduction is best utilized in the context of an estate plan which is put into place while both spouses are alive.

If the most valuable asset in an estate is open land, and if the estate is valued at more than \$3.5 million, it is quite possible that the land will have to be sold to pay the estate tax bill. (There will also be estate taxes due to the State of Massachusetts, if the estate exceeds \$1 million in value.) With good estate planning, it is possible to keep the land and reduce or eliminate estate taxes.

### **Estate Planning with Conservation Restrictions:**

Another way to reduce the value of an estate is to place a **conservation restriction** on the open land. A conservation restriction (also known as a conservation easement) eliminates the development value of the land. Where development pressures have increased the value of open space, the development value can equal more than 50% of the land value. By reducing the value of the land with a conservation restriction, the land is protected from development, and the landowner's family will not have to sell the land to pay estate taxes.

An important additional benefit to placing land under conservation restriction is that, **if the conservation restriction was donated**, the value of the land under conservation restriction can be reduced by 40% when determining its value for federal estate taxes. (See Internal Revenue Code, Section 2031c.) This means that if the estate consists of \$4 million worth of land, and this land is under a donated conservation restriction, the estate value will be reduced by \$1.6 million (40% of \$4 million) and the land will not be subject to federal estate tax.

### **Other Taxes reduced through Conservation Restrictions**

While conservation restrictions can be used to reduce estate taxes, they can also be used to reduce or eliminate federal income and other taxes. Under the new federal conservation tax incentive (The Pension Protection Act of 2006), IRC Section 170(h) has been amended to provide greater tax deductions for **donations of conservation** restrictions and certain other interests in land, through 2009:

- Raises the deduction a donor can take for donating a conservation easement from 30% of their adjusted gross income in any year to 50%;
- Allows qualifying farmers and ranchers to deduct up to 100% of their income; and
- Extends the carry-forward period for a donor to take tax deductions for voluntary conservation easements from 5 to 15 years.